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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/408,142      09/29/99      MUKOUYAMA

M      HIRA1140

EXAMINER

HM12/1003

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MARY I

ART UNIT

PAPER NUMBER

1651  
DATE MAILED:

10/03/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Advisory Action

Application No.  
09/408,142

Applicant(s)  
Mukouyama et al

Examiner  
Irene Marx

Art Unit  
1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Sep 24, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

## THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (See NOTE below);
  - (b) ☐ they raise the issue of new matter. (See NOTE below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: see attachment

4. ☐ Applicant's reply has overcome the following rejection(s):

5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attachment

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: none

Claim(s) objected to: none

Claim(s) rejected: 1-14

9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

11. ☐ Other:

IRENE MARX  
PRIMARY EXAMINER  
ART UNIT 1651

Serial No. 09/408142  
Art Unit 1651

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Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the proposed amendments in claims 3 and 10 to recite of "fumaric acid dry crystals, moisture -containing fumaric acid crystals, or fumaric acid aqueous suspension", including new issues under 35 U.S.C § 112 and of new matter.

New issues that would require further consideration and/or search are also raised with respect to the proposed amendments to claims 3 and 10 of "maintaining the temperature of said solution between 50°C and 130°C; cooling or permitting to cooling of said homogeneous solution ... to crystallize L-aspartic acid, thereby obtaining suspension containing L-aspartic acid...", and by the recitation in claim 8 of "wherein the crystallization step is performed by a continuous method", including new issues under 35 U.S.C § 112. For example, it is uncertain in claim 1 which is considered to be "the crystallization step".

The addition of claims 15-20 raises new issues that would require further consideration and/or search with respect to the washing step in claim 16, the recycling step in claim 17, the repetition of filtration steps in claim 18, recycling step of claim 19 and the continuous method of claim 20, including new issues under 35 U.S.C § 112, and of new matter.

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

The arguments presented are directed to claims that are not entered. The rejections are deemed proper for the reasons already of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.



IRENE MARX  
PRIMARY EXAMINER